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**MAILED**

**APR 26 2011**

**OFFICE OF PETITIONS**

In re	:	DECISION ON APPLICATION
Nicely, et al.	:	FOR PATENT TERM ADJUSTMENT
Application No. 10/668,670	:	AND NOTICE OF INTENT
Filed: September 22, 2003	:	TO ISSUE
Patent No. 7,867,080	:	CERTIFICATE OF CORRECTION
Issued: January 11, 2011	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)", filed March 10, 2011. Patentee requests that the patent term adjustment under 35 U.S.C. 154(b) be corrected from eight hundred eighty-nine (889) days to one thousand one (1001) days.

The application for patent term adjustment is **GRANTED**.

The Patent Term Adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **one thousand one (1001) days**.

On March 24, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the instant application. The Notice stated that the patent term adjustment (PTA) to date was six hundred (600) days. On June 9, 2010, Applicant filed a "LETTER REGARDING PATENT TERM ADJUSTMENT AT ALLOWANCE PURSUANT TO COMMENT 43 OF THE FINAL RULE", which was a candor letter indicating that the 600 days of patent term accorded was thought to be longer than appropriate. On January 11, 2011, the application issued into Patent No. 7,867,080, with a patent term adjustment of one thousand one (1001) days.

A review of the file reveals that Applicants were assessed delay of one hundred twenty (120) days for filing the "LETTER REGARDING PATENT TERM ADJUSTMENT AT ALLOWANCE PURSUANT TO COMMENT 43 OF THE FINAL RULE" on June 9, 2010. Pursuant to 37 C.F.R. § 1.704(e), the submission of an application for patent term adjustment will not be considered a failure to engage in reasonable efforts to conclude prosecution of the application. Likewise, the submission of a candor letter will not be considered a failure to engage in reasonable efforts to conclude prosecution of the application. Accordingly, zero (0) days should have been assessed for this filing.

Applicants also point out that they should have been assessed additional days of Applicant delay pursuant to 37 CFR 1.704(c)(8). Applicants filed an RCE on January 14, 2008. Subsequently, Applicants filed an IDS on January 22, 2008, and were not assessed any days of Applicant delay. However, pursuant to 37 CFR 1.704(c)(8), eight (8) additional days of Applicant delay should have been assessed for this supplemental filing.

In view thereof, the correct determination of patent term adjustment is one thousand one (1001) days (1235 days of PTO delay, reduced by 234 days of applicant delay).

Receipt of the \$200 fee is acknowledged.

The application is being forwarded to the Certificate of Corrections Branch for issuance of a certificate of correction, indicating a Patent Term Adjustment of **one thousand one (1001) days**.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.



Anthony Knight  
Director  
Office of Petitions

Enclosure: draft Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE  
**DRAFT CERTIFICATE OF CORRECTION**

PATENT : 7,867,080 B2

DATED : January 11, 2011

INVENTOR(S) : Nicely et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[\*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 889 days.

Delete the phrase "by 889 days" and insert – by 1001 days--